

Stafford County BOARD OF ZONING APPEALS

MINUTES August 22, 2006

The regular meeting of the Stafford County Board of Zoning Appeals on Tuesday, August 22, 2006 was called to order with the determination of a quorum at 7:04 p.m. by Chairman Nick Kopchinsky in the Board of Supervisor's Chambers in the Stafford County Government Center. Mr. Kopchinsky introduced the Board members and staff and explained to the public present, the purpose, function and process of the Board of Zoning Appeals. He asked the members of the public who planned to speak at this meeting to please stand and raise their right hand, swearing or affirming to tell the truth.

Mr. Kopchinsky said the By-laws of this Board state that the applicant is allowed up to ten minutes to state their case, the other speakers are allowed up to three minutes to testify, and the applicant is allowed up to three minutes for rebuttal.

Members Present: Nick Kopchinsky, Larry Ingalls, John Overbey, Julie Rutledge, Steven Beauch, Cecelia Kirkman 7:06 p.m. and Angelo Amador

Members Absent:

Staff Present: Rachel Hudson, Deputy Zoning Administrator
Wanda Doherty, Recording Secretary

Declarations of Disqualification's: Ms. Rutledge disqualified herself from the Special Exception case SE06-08/2600550 because her company had done title work for the applicant Ressa Schindel in the past.

Mr. Kopchinsky stated the agenda had changed due to the following cases being postponed by request of the applicants or their representatives; SE06-3/2600341 Stafford County Board of Supervisors (Rocky Pen) and SE06-6/200530 South Able Investments, LLC.

Ms. Kirkman interrupted the Chairman to ask the public leaving what case they had come to hear and they staid (two citizens) the Stafford County Board of Supervisors case (Rocky Pen).

PUBLIC HEARINGS:

Ms. Hudson reviewed the following case for the Board.

SE06-07/2600549 - BURKHALTER, THOMAS L & CHERYL B - Requests a Special Exception per Stafford County Code, Section 28-273, "Nonconforming Structures or Residential Buildings", to allow an addition to an existing nonconforming single family dwelling on Assessor's Parcel 45-278. The property is Zoned A-2, Rural Residential, located at 146 Enon Road.

Mr. Burkhalter said he was requesting a special exception to add on to his nonconforming house including a basement. He said he wanted to make his home handicap accessible and room for his daughter and her son to move in with them. He said his daughter would be their caretaker and needed the extra living space for her and her son.

Ms. Kirkman said she did not see any plans of the addition in her packet and wanted to know if the doors would be three feet wide for handicap accessibility.

Mr. Burkhalter said yes.

Mr. Ingalls asked if the siding on the addition would be the same as the original dwelling.

Mr. Burkhalter said yes.

Mr. Beauch asked for the application to be read.

Mr. Kopchinsky opened the Public Hearing for other comments.

Proponents: None

Opponents: None

Mr. Kopchinsky gave the applicants a final opportunity to speak.

Mr. Kopchinsky closed the public hearing.

Motion:

Mr. Overbey made the motion to approve the addition of 600 square feet with a basement as requested.

Ms. Rutledge seconded the motion.

Mr. Overbey said he made the motion because he believes it meets the ordinance requirements for a special exception. He said the applicant has stated this addition would not be seen from the front of the house and would not change the character of house from the road. He said he is glad

the Board has this avenue now to help the County citizens.

Ms. Rutledge said she seconded the motion for the same reasons as her colleague. She said she would like to note that it is not within in our jurisdiction to instruct anyone on handicap requirements. She said as we all know these rules change daily, monthly or yearly and would

recommend the applicants seek the appropriate information from the appropriate source.

Ms. Kirkman asked staff if the notification requirements on a special exception are the same as a variance because the information was not in her packet. The second question is if there are any creeks located on this property. She asked if someone has determined the addition will not encroach on the buffer and at what stage would that happen.

Ms. Hudson said adjacent property owner letters were sent and the other concerns will be reviewed when the applicant applies for a permit.

Mr. Kopchinsky asked if the new ordinance on ownership is applicable to special exceptions.

Ms. Hudson said it is applicable to both special exceptions and variance. The affidavit is in the original file and a copy of the affidavit will be included in the meeting packages in the future.

Vote:

Motion to approve 7-0

Mr. Ingalls – yes

Mr. Kopchinsky – yes

Mr. Overbey – yes

Ms. Rutledge – yes

Ms. Kirkman – yes

Mr. Amador – yes

Mr. Beauch - yes

Mr. Amador asked if the applicants could be informed of what will happen next so they can go.

Mr. Kopchinsky said the applicants would receive a letter saying your application has been approved and they can move on submitting their building application.

Mr. Burkhalter asked how soon could he apply for his permit.

Ms. Hudson said he could apply tomorrow.

Ms. Kirkman said, but Rachel, regardless of the likelihood, it is theroreadically possible

somebody could appeal the decision so the applicant needs to know about the thirty-day period.

Mr. Kopchinsky said he made the announcement that anybody dissatisfied with the actions of this Board have thirty days to appeal to the circuit court, but first they have to prove they are the

aggrieved party. He said Mr. Burkhalter would have that right if he was turned down but somebody else would have to show that by granting the special exception in accordance with the ordinance was detrimental to them. He said he guesses what Ms. Kirkman is saying is to be aware that somebody could conceivably appeal this which would stop the process. Therefore, if you move forward rapidly, you will have some minor risk.

Ms. Hudson reviewed the following case for the Board.

SE06-08/2600550 - SCHINDEL, RESSA L - Requests a Special Exception per Stafford County Code, Section 28-273, "Nonconforming Structures or Residential Buildings", to allow an addition to an existing nonconforming single family dwelling on Assessor's Parcel 55B-1-4. The property is zoned A-2, Rural Residential, located at 619 White Oak Road.

Ms. Kirkman said she wanted to clarify; Rachel was there any kind of opinion obtained on whether or not they could come back since it is less than a year since they were denied.

Ms. Hudson said it was a different application, this is a special exception and the other was a variance.

Ms. Kirkman stated even though they are requesting the exact same thing, I just want to make sure a legal opinion was obtained.

Ms. Hudson said she did not seek a legal opinion because it is a different application.

Mr. Overbey said the applicant would have to come back for a variance for that rule to come in.

Ms. Kirkman said she wanted to make sure they have the basis to move forward.

Mr. Kopchinsky said he believes this a different application and if a variance was requested it would be different.

Ms. Schindel the applicant said she is requesting a special exception to add a 450 square foot addition on her home. She said she is 37.8' from the front but she is not encroaching on the front. She said she is adding on to the side. Ms. Schindel she has pictures of her house and pictures of the neighbor's houses showing she will not be changing the chrematistics of the neighborhood.

Mr. Overbey asked how much distance would it be between the addition and property line.

Ms. Schindel said she believes it is 85' and should be on the plat.

Mr. Beach asked if a garage workshop was being added.

Ms. Schindel said she was adding two rooms with one for gym purposes and one would be an office/study.

Mr. Beauch said he did not have anything to show the addition.

Mr. Kopchinsky said it is not outlined but it is the 25' x 18' room on the drawing.

Ms. Schindel said she had a site plan but it was the only one she had.

Mr. Kopchinsky said if she gives the Board, the plans to look at she would not get back for 30 days.

Ms. Schindel said she did not want to do that.

Ms. Schindel said the siding and everything would be the same.

Mr. Kopchinsky opened the Public Hearing for other comments.

Opponents: None

Proponents: None

Mr. Amador said he would like to ask the applicant a question, it says it does not increase the nonconformity so it is more than 40' back.

Ms. Schindel said yes and she was never going to encroach from the beginning.

Mr. Kopchinsky closed the public hearing.

Mr. Ingalls made the motion to grant the request for special exception in case SE06-08 to allow for the construction of a 18 x 25' addition on the left hand side of the building, no closer than 42.5' from the front setback.

Mr. Overbey seconded the motion.

Mr. Ingalls said he made the motion because it meets intent of the requirement for granting a special exception and in accordance with the new ordinance.

Mr. Overbey said he seconded the motion for all the reasons Mr. Ingalls stated.

Mr. Amador said he is leaning to vote in favor of the motion understanding that it is based not on the plat submitted, but 42.5' from front setback.

Motion:

Vote:

Motion to approve – 6-0-1 (abstained-Ms. Rutledge)

Mr. Ingalls – yes

Mr. Kopchinsky – yes

Mr. Overbey – yes

Ms. Rutledge – abstained

Mr. Amador – yes

Ms. Kirkman – yes

Mr. Beauch - yes

Mr. Kopchinsky reviewed the same information as stated for Mr. Burkhalter to Ms. Schindel regarding process going forward.

OTHER BUSINESS

Mr. Kopchinsky asked if there was any unfinished business. He said he had talked to the County Attorney regarding the Gross appeals. He said at this time the Board of Zoning Appeals (BZA) has not been served so there is no action to take. He said the County Attorney would not represent the BZA in this case if served. He said he asked the County Attorney for clarification on why a representative from his office could not attend BZA meetings. He said the County Attorney had an ethical conflict that had come up in both Fairfax and Prince William where the County Attorney's office had a lawyer and a member of the Board of Zoning Appeals asked a question. He said the question asked by a BZA member was general in nature, and they received an answer. He said even though that answer said I disagree with what you are doing and why. He said ultimately the Board of Supervisors appealed the decision, the County Attorney's office was prohibited from representing the Board of Supervisors who pays them, and they had to go out and hire outside counsel. He said based on that information the County Attorney is opposed to representing this Board.

Mr. Kopchinsky said he discussed appeals or legal actions that would be best discussed in a closed session with the County Attorney. He said he was a little uncomfortable until he knew what paperwork, process before, and the County Attorney said he would provide that information to the Board.

REPORT BY DEPUTY ZONING ADMINISTRATOR

Ms. Hudson said she had received the closed meeting session information from the County Attorney and would pass on to the Chairman.

ADOPTION OF MINUTES

June 27, 2006

Mr. Kopchinsky asked that in the future at the end of the first paragraph add *swearing or affirming* to that.

Mr. Overbey made the motion to approve the June 27, 2006 minutes as amended.

Mr. Ingalls seconded the motion.

Motion:

Vote: 4-0

Motion to approve – 4-0

Mr. Ingalls – yes

Mr. Kopchinsky – yes

Mr. Overbey – yes

Mr. Beauch – yes

July 25, 2006

Ms. Rutledge and Ms. Kirkman questioned the vote on televising the Board of Zoning Appeals meetings.

Mr. Kopchinsky said he had some small changes and asked if anyone else had any changes.

Ms. Kirkman said she had some substantial changes.

Ms. Doherty said there were some problems with the tape from the last meeting. She asked Ms. Kirkman to provide her changes and she would verify those changes with the tapes.

Mr. Kopchinsky said if the tapes cannot verify the information and if the discussion was not meaningful, it could be left out. He said he would like to suggest the July 25, 2006 minutes be edited and brought back to the September 28, 2006 meeting for a vote.

Mr. Kopchinsky said he would like to report on a conversation he had with Mr. Schwartz from the Stafford County Board of Supervisors regarding the Board of Zoning of Appeals meetings being televised. He said Mr. Schwartz had pointed out the room in the back has been set-up for meetings to be televised and the cost would be for someone to sit in the booth to run the

equipment. He said the County basically owns the television channel and they can broadcast anything they want at anytime.

Ms. Kirkman said she met with Steve Crosby to get clarification on this matter and it does not even need a Board appropriation. She said it is a minimal cost to have somebody do this and there is already money in the budget for it. She said the County is happy to broadcast the meetings should we vote to do so.

Mr. Kopchinsky said he is just relating what a member of the Board of Supervisors told him. He said what he was pointing out is for everybody to consider it is not the big hassle we thought it was. He said there were some other comments yes, no and the biggest reason for not televising the meeting is that we are not an elected body but appointed by the court. He said some courts allow cameras in the chambers. He said he could clearly understand why a County citizen would want to know what their elected officials are doing.

Ms. Kirkman said she is certain that the BZA would not have to go before the Board of Supervisors and has spoken with Mr. Schwartz and Mr. Crosby. She said in light of the new information, which Mr. Crosby was clear it does not need an action by the Board of Supervisors. She said the only action it requires is the vote of the Board of Zoning Appeals; I am going to make a motion that we televise our meetings.

Mr. Kopchinsky said he has a motion by Ms. Kirkman to have the county televise the Board meetings for the BZA, do I have a second.

Mr. Ingalls seconded the motion.

Ms. Kirkman said she made the motion she did because the BZA is a citizen body and although we are approved by the courts, elected officials nominate us. She said the BZA is here representing citizens and she believes citizens have the right to as much access to our proceedings as we can reasonably provide given the arrangements in the County. She said it seems like it is quite reasonable to provide it.

Ms. Hudson asked if Ms. Kirkman ask Mr. Crosby who pays for the person to sit in the booth. She said we do not have money in our budget.

Ms. Kirkman said Mr. Crosby was very clear that it would not be a cost incurred by the BZA.

Ms. Hudson said Code Administration does not have money in their budget to pay for someone to come and sit. She said she would like to research.

Ms. Rutledge said she would like to hear what Ms. Hudson has to say because she thinks it is important and the BZA did not have to act tonight. She said the BZA could take their time, get the information and get Mr. Crosby come and put it on the record.

Mr. Amador said he did not think it would change things and there are seven members here tonight. He said the way he sees it whether the BZA or the Board of Supervisors is paying for it or some other County office is paying for it, it is still being paid for by the same people, the County residents that pay the taxes. He said he would still vote against it for the same reasons he stated last month, which is we are appointed not nominated by the Board of Supervisors. He said they make the recommendation but we are appointed by the judicial body of the Commonwealth of Virginia and they do not televise their hearings. He said we have the meetings late enough at night, meeting notice requirements, and other things for people that are interested in coming here, write letters or do a number of other things. He said County funds could be better used than me telling my kids to turn on the TV so they can see Dad.

Ms. Rutledge said she agrees with what Mr. Amador stated and would also like to add that it is important that we remain a non-political body that we are an impartial Board as much as we can be. She said we are like a panel of judges, not that we are judges, we remain impartial, and we do not become political. She said the BZA meetings are advertised and open to the public and she thinks that is sufficient. She said she would like to see the money used, even if it is minimal for other areas of the budget.

Mr. Amador said it could pay for an Attorney to support our decisions.

Ms. Kirkman said that might pay for about fifteen minutes worth of an Attorney's time. She said she thinks it is fundamentally about access. She said she thinks the Board should be subject to the same access as the Planning Commission and the Board of Supervisors because at the end of the day there is a triumvirate there when it comes to land use. She said it does not matter what kind of legislation is passed if we are not upholding the integrity of the zoning ordinance. She said she thinks citizens have a right to know and have as much access to our process to make their own decisions on whether or not the BZA is doing that.

Mr. Beauch asked if anyone knew if the Circuit Court was televised.

Ms. Kirkman said it is not and we are not a court, we are a citizen body.

Mr. Ingalls said he is going to support the motion as he did last time and more so, now that he knows the County has budgeted the money. He said if we do not spend it, nobody else is going to get it and they are going to spend it on something. He said he did not think the money is the

big issue and did not believe we are talking about a lot of money. He said he believes that people in the County are interested in what is going on and the BZA is one of few places that do

not even have good information on the web. He said you cannot go on the web and find our cases or information about the BZA other than we are there. He said you cannot find what we did, voted on, minutes and none of that is there that I can find.

Ms. Kirkman said it has changed and our minutes are on the web, agenda but packets are not.

Mr. Ingalls said he apologized. He said he still believes it is public information and other BZA's around the state are televised but he could not tell you who. He said at the last State session the question was asked, a number of people raised their hands, and he thinks this BZA needs to move forward.

Mr. Kopchinsky called for the vote, all those in favor to notify the County that the BZA wants their meetings televised signify by saying I.

The motion fails 3-4

Mr. Ingalls – yes

Mr. Kopchinsky – no

Mr. Overbey – yes

Ms. Rutledge – no

Mr. Amador – no

Ms. Kirkman - yes

Mr. Kopchinsky said he is not totally opposed to broadcast and he appreciates Ms. Kirkman talking to Mr. Crosby. He said this issue could come up again at anytime and he is thinking about talking to one of the judges in the court. He said they appoint us and he would like to get an opinion if they think it would be appropriate to have this type of information on TV.

Ms. Rutledge said she would like Ms. Hudson check into the questions she raised.

Mr. Ingalls asked for written documentation from the County Administrator that says, the money is there, how much, where in the budget, who would do it, and the process if we are willing to do it.

Ms. Kirkman said she had two other things she would like to bring up. She asked Ms. Hudson to clarify on the August 22, 2006 memo for you stating that as members of the BZA we should save any e-mail to or from members of the BZA regarding anything other than procedure issues. She said her understanding was not only do they have to retain e-mails to and from each other but also we have to retain any e-mails pertaining to BZA matters, is that correct.

Mr. Kopchinsky said there is a package in front of everybody about and about half way through that package is a section that talks about e-mail. He said on page two it pretty clearly states that e-mail falls under the broad definition of public record and you have to retain it.

Ms. Kirkman said she has always opposed allowing applicants to pick and choose when there application will be heard. She said she was concerned with the very problem she was trying to avoid tonight which is citizens showing up expecting to speak on a public hearing and were not able to do so because the applicant had again chosen not present tonight. She said want to take note and have it recorded that that in fact did happen (two people left).

Mr. Overbey said Mr. Chairman that said going back to our previous discussion on the video or televising of our meeting, in this packet of Freedom of Information Act under access of meetings it says, *question: May the public or media record the meeting and the answer: Yes, any person may photograph, film or record or otherwise reproduce any portion of the meeting required to be open.*

Mr. Amador said nobody is objecting to that.

Mr. Overbey said that is basically, what we are saying we are rejecting to the recording of the meeting.

Ms. Kirkman said we are objecting to the recording of the meeting.

Mr. Amador said we are objecting to the County paying my hard-earned money to record this meeting and televise it whether it be \$2.00 or \$10.00.

Ms. Rutledge said we are also rejecting because we are quasi judicial.

Mr. Amador said we are rejecting for many reasons.

Mr. Overbey said it says we have to be an open meeting.

Ms. Rutledge said we are an open meeting.

Mr. Kopchinsky said we have had the vote on that issue. He said if someone wants to come on their own and record they can, press or anyone. He said the Board of Supervisors could tell us to have the meetings televised.

Ms. Kirkman said that is exactly what they did with the Planning Commission.

Mr. Overbey said in the future when we have special exceptions and the have been variances have the applicants fill out a brand new application.

Ms. Hudson agreed.

Mr. Kopchinsky said he would like to address Ms. Kirkman's position that these people showed up for a meeting and the case was not heard. He said he would like to point out that it was not that long ago we had to send twelve people away because we did not have enough members here to hear the case. He said it is a two way street, things like that happen and there is not a lot we can do. He said another time we had an applicant that did not show up so we postponed the case and some people were upset and I understand that. He said it is the applicant's choice to pull a case.

Ms. Kirkman said when we had the fall training and we had some discussion about this issue. She said some localities have resolved this is to allow the applicant to postpone up until there has been an advertising for the public hearing.

Mr. Kopchinsky said that is not the way our County ordinance is established. He said it could be subject to change but that is not the case right now.

Mr. Kopchinsky asked if there was any further business.

ADJOURNMENT

Mr. Overbey made the motion to adjourn. Ms. Rutledge seconded the motion.

Vote:

Motion carried 7-0

Mr. Kopchinsky – yes

Mr. Amador – yes

Mr. Overbey – yes

Mr. Ingalls – yes

Ms. Rutledge – yes

Ms. Kirkman - yes

Meeting Adjourned at 8:06 p.m.

WLD

Approved: _____ Date: _____
Rachel T. Hudson, Deputy Zoning Administrator